

CA2ONEA 93E021

Ontario. Environmental Assessment Board.

EP-92-02(F)

EASTVIEW ROAD LANDFILL - CITY OF GUELPH. 1993.

CA2ONEA 93E021



ENVIRONMENTAL ASSESSMENT BOARD

EP-92-02(F)

EASTVIEW ROAD LANDFILL - CITY OF GUELPH

REASONS FOR DECISION AND DECISION

IN THE MATTER OF Section 30 of the *Environmental Protection Act*, R.S.O. 1990, c. E-19, and the *Intervenor Funding Project Act*, R.S.O. 1990, c. I-13;

- and -

IN THE MATTER OF an application by The Corporation of the City of Guelph for an amendment to its Provisional Certificate of Approval to permit the continued operation of the site for disposal of non-hazardous solid waste for an additional five years.

BEFORE: Elaine Tracey - Chair

DATED at TORONTO this 14TH DAY of JANUARY, 1993

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Earth Sciences Library



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**CITY OF GUELPH - EASTVIEW ROAD LANDFILL
INTERVENOR FUNDING**

AMENDMENT TO DECISION

IN THE MATTER OF Section 30 of the *Environmental Protection Act*, R.S.O. 1990, c. E-19, and the *Intervenor Funding Project Act*, R.S.O. 1990, c. I-13; and

IN THE MATTER OF an application by The Corporation of the City of Guelph for an amendment to its Provisional Certificate of Approval to permit the continued operation of the site for disposal of non-hazardous solid waste for an additional five years.

AMENDMENT

Paragraph 6 on Page 4 of the decision should be substituted with the following:

The panel believes it is reasonable to phase the funding hearing and believes it is a more efficient and accountable use of public funds. The decision of the funding panel is conditional on the dates in the Procedural Directions being changed as requested by the parties, provided these changes do not affect the commencement of the main hearing. The date changes are requested to ensure that the intervenors' funds are not expended prematurely in preparing witness statements and reports on issues that may be resolved through meetings. The date of March 15, 1993 would be changed to May 17, 1993. The date for filing joint submissions would be advanced from May 17, 1993 to March 26, 1993. Regular meetings will be held between experts between February 1, 1993 and March 26, 1993 to allow both informal and, if necessary, formal interrogatories. Mr. Garrod will seek agreement from the other parties to the hearing, Guelph Grangehill Developments Limited and Simon-Wood Limited and notify the Board as to this request to amend the Procedural Directions. The funding panel finds that the date changes as requested are appropriate in order that the agreement reached by the parties to the funding hearing be workable.

DATED at TORONTO this 19TH day of JANUARY, 1993.

"Elaine Tracey"

Elaine Tracey
Funding Panel



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IN THE MATTER OF Section 30 of the *Environmental Protection Act*, R.S.O. 1990, c. E-19, and the *Intervenor Funding Project Act*, R.S.O. 1990, c. I-13;

- and -

IN THE MATTER OF an application by The Corporation of the City of Guelph for an amendment to its Provisional Certificate of Approval to permit the continued operation of the site for disposal of non-hazardous solid waste for an additional five years.

BEFORE: Elaine Tracey - Chair

APPEARANCES

Stephen Garrod - for the City of Guelph

Jack Coop - for the Ministry of the Environment

Laura Nemchin

Scott Ceriko

Theresa McClenaghan - for Eastview Residents for Environmental Justice

Peter Linke

REASONS FOR DECISION

The Corporation of the City of Guelph has applied for an amendment to its Provisional Certificate of Approval to permit the continued operation of its landfill site for an additional five years. At the preliminary hearing on November 17, 1992 Peter Linke, Guelph Grangehill Developments Limited and Simon-Wood Limited were identified as intervenors, for the purpose of the *Intervenor Funding Project Act*.

An Intervenor Funding Hearing was held on Tuesday, January 12, 1993 in the Environmental Assessment Board office in Toronto, Ontario.

The Board received one application for Intervenor Funding from Peter Linke with a request to amend the name of the party from Peter Linke to the Eastview Residents for Environmental Justice.

Mr. Linke was not represented by counsel prior to the Board's preliminary hearing on November 17, 1992 where he was granted party status.

The parties to the hearing had already consented to the name change and had confirmed this in correspondence with the Board prior to the commencement of the Funding Hearing.

The City of Guelph, the proponent, was named the funding proponent pursuant to Section 1 of the Intervenor Hearing Act.

The funding panel found itself in an unusual situation in that the proponent and the citizens group through discussions and correspondence had earlier agreed to divide the funding hearing into two phases, rather than debate and decide the entire funding application at the hearing of January 12, 1993.

The proposal presented by Mr. Garrod for the City of Guelph and agreed to in part by the intervenor's counsel, Ms. McClenaghan follows:

Phase 1:

- Review of the City's material to allow intervenor's consultants to become familiar with the details of the application;
- A site tour with City Staff and proponent's consultants;

- A series of meetings with proponent's consultants to clarify their understanding and to narrow issues and to prepare a joint submission with the City's consultants regarding which facts and expert opinions are agreed upon, which issues have been resolved, agreed conditions of approval, which issues remain unresolved and the important considerations with respect to each of those unresolved issues.

Phase 2:

- The preparation of reports and witness statements by intervenor's experts with respect to any unresolved issues;
- Preparation of additional conditions of approval which the intervenor's consultants may consider necessary relating to any unresolved issues;
- Attendance at the contemplated prehearing settlement conference; and
- Final preparation for the hearing and attendance at the hearing.

The City proposed funding for the Eastview Residents for Environmental Justice in the amount of \$45,500.00 for the following:

1.	Mr. Wilf Ruland (hydrogeology)	\$12,500.00
2.	Conestoga Rovers Associates (design and operations)	\$10,000.00
3.	Conestoga Rovers Associates (other issues)	\$10,000.00
4.	Seitz, McClenaghan (legal service)	\$10,000.00
5.	Disbursements (shared between Conestoga Rovers Associates and Seitz, McClenaghan)	\$ 3,000.00

All parties agreed to the above for Phase 1 with the exception of Ms. McClenaghan regarding the inclusion of the G.S.T. Ms. McClenaghan agreed the \$12,500.00 for Mr. Ruland did include the G.S.T. but argued the remainder was only for fees and disbursements and did not include the G.S.T.

Mr. Garrod stated "the City felt the total amount of \$45,500.00 was a fair and generous allocation for work to be completed in Phase 1, including the G.S.T."

Ms. McClenaghan on the other hand looked at the amount agreed to in Phase 1 as "not overly generous", and stated she would not "want to start cutting back because of the G.S.T. being included."

Ms. McClenaghan said that the letter she received from Mr. Garrod (Ex. 3) did not state that the sums were inclusive of G.S.T. She did not consent to these figures based on the G.S.T. being included.

The panel feels it is unfortunate that it was not clear from the onset if the G.S.T. was included or not. It is noted in the last paragraph of Mr. Garrod's letter, "... we would contemplate forwarding a cheque for \$44,000.00 (amount changed at hearing) to you in trust...". Perhaps Ms. McClenaghan should have questioned if this amount did not include the G.S.T. as it obviously is the full amount of the cheque.

Despite this, the Panel finds that the amount for items 2, 3, 4 and 5 totalling \$33,000.00 do not include G.S.T. because one party to the agreement does not accept this position and there is no clear statement to suggest that G.S.T. is definitely included.

The panel believes it is reasonable to phase the funding hearing and believes it is a more efficient and accountable use of public funds. The decision of the funding panel is conditional on the dates in the Procedural Directions being changed as requested by the parties, provided these changes do not affect the commencement of the main hearing. The date changes are requested to ensure that the intervenors' funds are not expended prematurely in preparing witness statements and reports on issues that may be resolved through meetings. The date of March 15, 1993 would be changed to May 17, 1993. The date for filing joint submissions would be advanced from May 17, 1993 to March 29, 1993. Regular meetings will be held between experts between February 1, 1993 and March 29, 1993 to allow both informal and, if necessary, formal interrogatories. Mr. Garrod will seek agreement from the other parties to the hearing, Guelph Grangehill Developments Limited and Simon-Wood Limited and notify the Board as to this request to amend the Procedural Directions. The funding panel finds that the date changes as requested are appropriate in order that the agreement reached by the parties to the funding hearing be workable.

The city reserves its right to take whatever position it determines may be necessary regarding the reasonableness of any aspects of the Phase 2 budget.

Mr. Coop stated the Director will reserve his right to make whatever submissions are necessary about the reasonableness and appropriateness of the application as well. The Director did have some previous concerns about the initial application. These concerns stated in a letter (Ex 4) from Nancy Jack, from the Ministry of the Attorney General addressed to Ms. McClenaghan have all been deferred and "the Director is content to proceed with the agreed proposal for Phase 1 funding."

Ms. McClenaghan with respect to Phase 2 funding stated "we are not at this time binding, restricting, the application for Phase 2 funding. This would include any jurisdictional issues, as well as any quantum."

In the application for funding there was a request for approximately \$5,000.00 for water sampling to be carried out by Mr. Wilf Ruland. Mr. Garrod stated that if Mr. Ruland is not able to convince the proponent's consultants that additional water sampling is necessary then the proponent should not be requested to carry out further sampling. Ms. McClenaghan requested that this issue be deferred. Ms. McClenaghan did not have the opportunity to discuss further with her experts if there could be agreement reached on this issue.

The panel agrees Ms. McClenaghan should be able to discuss this matter with her experts and is hopeful an agreement will be reached, so that the panel will not have to reconvene. However, if agreement is not reached, and the intervenors still believe it necessary to have further water sampling carried out, perhaps the issue could be resolved through correspondence with this panel and other parties to the hearing.

The panel questioned the involvement of the Eastview Residents for Environmental Justice prior to this hearing as the application for funding indicates the group was formed November 28, 1992. The panel also questioned the amount of funds raised by this group. The application shows the group had raised \$960.00 by sale of memberships together with matching contributions from Mr. Linke and donations.

Mr. Garrod said the involvement of the Eastview Residents for Environmental Justice was a matter of concern with the City as well and advised it would be an issue in Phase 2. He also expressed concern in that the City was not familiar with a group under the name of Eastview

Citizens for Environmental Justice. Mr. Linke did attend the open houses prior to the hearing and perhaps seven or eight of the 40 families involved with this group had attended one or two open houses.

The panel also raised the concern of duplication in that two other parties to the hearing, Guelph Grangehill Developments Limited and Simon-Wood Limited, have identified similar issues as the Eastview Citizens for Environmental Justice.

Ms. McClenaghan responded that the issues of these two parties are not the direct issues that Mr. Linke and the residents have.

Again, Mr. Garrod responded that these were questions the city wrestled with and if only Mr. Linke had been the party requesting funding, the City would have strenuously resisted any intervenor funding under the legislation on the basis that Mr. Linke simply has a private interest.

Ms. McClenaghan commented that "the interest affects both the public and the private interest. The issues are all public issues and although there may be aspects which happen to affect the private interest in that someone who lives adjacent to the site may have a greater private interest than someone who lives further away."

The application stated this group was previously in existence with respect to other matters in 1989. The panel found this to be vague and requested more information be forwarded to the Board and other parties prior to commencement of Phase 2.

Issues of duplication, private vs. public and fund raising have been deferred to Phase 2 of the Funding Hearing.

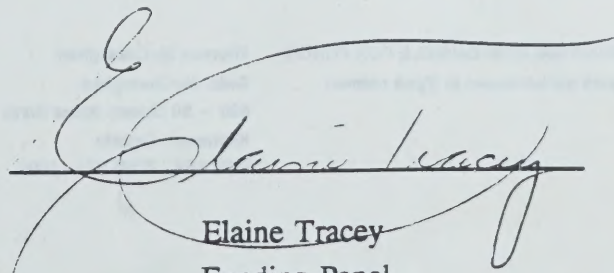
DECISION

- (1) The Corporation of the City of Guelph is named the funding proponent.
- (2) Intervenor funding in the amount of \$47,810.00 (G.S.T. included) is awarded to Eastview Residents for Environmental Justice for Phase 1 as set out in Appendix A attached and forms part of this decision.

- (3) Claims for funds pursuant to this intervenor funding program shall be made in accordance with the Environmental Assessment Board's "General Principles for the Submission of Claims".
- (4) A cheque in the amount of \$47,810.00 will be issued to Ms. McClenaghan "in trust" by the Corporation of the City of Guelph. This trust account will only be accessible upon approval from the Ministry of the Environment.
- (5) Claims for funds are to be submitted monthly to the Finance and Capital Management Branch, Ministry of the Environment using the "Request for Funds Form".
- (6) The funding panel will accept submissions from this Eastview Residents for Environmental Justice prior to the Phase 2 funding hearing with respect to funding for water sampling by Mr. Wilf Ruland.
- (7) Funding application for Phase 2 will be filed with the Environmental Assessment Board by March 22, 1993.
- (8) The funding hearing for Phase 2, if required, will commence at 10:00 a.m. on Friday, March 26, 1993 at the Environmental Assessment Board, 2300 Yonge Street, Suite 1201, Toronto, Ontario unless otherwise ordered by the panel.

The funding order is conditional on the Procedural Directions being amended by the Hearing Panel.

DATED at TORONTO this 14TH DAY of JANUARY, 1993.



Elaine Tracey
Funding Panel

PHASE 1

FINANCIAL PLAN SUMMARY

Intervenor: Eastview Residents for Environmental Justice
(EREJ.WK1)

<u>LEGAL</u>	<u>HOURS</u>	<u>RATE/HOUR</u>	<u>TOTAL LEGAL FEES</u>	<u>GST @ 7%</u>	<u>TOTAL</u>
		\$	\$		\$
Intermediate counsel			10,000.00	700.00	10,700.00
Disbursements @ 10%			1,000.00	70.00	1,070.00
		Total (legal)			11,770.00

<u>EXPERTS AREA OF STUDY</u>	<u>HOURS</u>	<u>RATE/HOUR</u>	<u>EXPERT FEES</u>	<u>DISBURSEMENTS</u>	<u>GST @ 7%</u>	<u>TOTAL</u>
		\$	\$	\$	\$	\$
1. Wilf Ruland (hydrogeology & disbursements)			12,500.00			12,500.00
2. Conestoga Rovers & Associates						
- design and operation			10,000.00	1,000.00	770.00	11,770.00
- other issues			10,000.00	1,000.00	770.00	11,770.00
				Subtotal		36,040.00

INTERVENOR DISBURSEMENTS

General disbursements	0.00
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TOTAL AWARD	47,810.00
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PERSON/FIRM RESPONSIBLE FOR FUNDS: Theresa McClenaghan
(cheques will be issued in these names) Seitz, McClenaghan
820 - 50 Queen Street North
Kitchener, Ontario
N2H 6P4 (519) 571-1800

LIST OF EXHIBITS

1. Appointment of funding panel by Grace Patterson, Chair of the Environmental Assessment Board, dated December 23, 1992.
2. Application for intervenor funding by Peter Linke, Eastview Residents for Environmental Justice, dated December 18, 1992.
3. Letter dated January 8, 1993 from Stephen Garrod to Theresa McClenaghan.
4. Letter to Ms. McClenaghan dated January 11, 1993 from Nancy Jack.
5. Bank statement of Eastview Group, dated January 7, 1993.

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Ontario. Environmental Assessment Board.

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**RESOURCE CENTRE
INST. FOR ENVIRON'L. STUDIES
UNIVERSITY OF TORONTO**



